Supreme Court, U. S.
FILED
APR 12 1979
JOSEPH F. SPANIOL, JR. CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 79-112

JAMES H. COUNTRYMAN
Petitioner,

vs.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Respondents,

PETITION FOR WRIT OF CERTIORARI

JAMES H. COUNTRYMAN, per se
214 West 5th.- Room 204
Odessa, Texas 79761
Attorney for Petitioner

TABLE OF CONTENTS

Jurisdictional Grounds 2
Questions Presented 3
Statutes Involved 4
Statement of the Case 4
Argument 9
Certificate of Service 15

Appendix i-ii
Judgment, United States Court of Appeals for the Fifth Circuit A1
Amended Judgment, United States Court of Appeals for the Fifth Circuit A2
ORDER by United States District Court Western District of Texas, Midland ... A3
ORDER by United States District Court Western District of Texas, Midland ... A4
JUDGMENT, United States District Court Western District of Texas, Midland A5
Letter of Instruction from Clerk, United States Circuit Court of Appeals for Fifth Circuit, 4-16-79.. A6-7
Letter from Research Department, Trial Lawyers Association of America. A8-9
Informative Letter from President, Trial Lawyers Association of America . 10

Letter from Texas State Board of Insurance to Petitioner..... A11-12-13
Letter from State Farm Insurance Company to State Board of Insurance. A14-15
Letter from Petitioner to State Farm Insurance Company A16-17
Insurance Study by Federal Inssurance Administration A18-20
Amendment to Original Complaint... A21-24

CITATIONS

Cases

Fine Arts Corporation, C.C.A. Mich.... 1943, 136 F. 2d 28, Bnk. Rep. N.S. 213..... 3
Grabinger v. Conlisk, D.C. Ill. 1970 320 F. Supp. 1213, Affirmed, C.A. 7th 1972, 455 F. 2d 490 11
Douglas v. City of Jeannette, Pa. 877 13
Fisher v. Cahill, 474 F. 2d 991 13
North Carolina v. Pearce, 395 711 .... A8

Statutes

United States Constitution Art. I, Sec X, Cl. I, Amendments I, IV, V, VII and XIV.

Art 1, Sec. 10, Cl. 1. 42 USC. Sec. 1983. 395 U.S. 711. 29 Vanderbilt L. Rev. 815 (1976) Title 28, Sec.1331 (a) and (b) U.S.C.A. Title 28, Sec. 1332 (a) (b) (c) and (d). U.S.C.A.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1978

No.

JAMES H. COUNTRYMAN
Petitioner

vs.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO THE HONORABLES, THE CHIEF JUSTICE
AND ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

The Petitioner, James H. Countryman, an Attorney at Law for more than sixty years,

and appearing herein per se, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit rendered on January 17, 1979, affirming the summary judgment of the United States District Court for the Western District of Texas in the case of Petitioner versus the State of Texas and the State Farm Insurance Company.

JURISDICTIONAL GROUNDS

The Court of Appeals rendered no written opinion in the case, and its decision was expressed in one nescient word, namely, "Affirmed." Therefore, no citation of any authorities was made by the Court, since it seemed to assume that if there was anything about the case worth knowing the District Court would have discovered it.

Title 28, U.S.C.A., Secs. 1254 and 2101(c) confer upon the Supreme Court plenary jurisdiction to entertain appeals, writs of certiorari and reviews of all final judgments of the Court of Appeals of the Fifth Circuit. Since the District Court dismissed the case for want of jurisdiction it went to the Court of Appeals on the pleadings alone, in which event, was not that Court

required to accept as true whatever facts were well pleaded? See In re: Fine Arts Corporation, C.C.A. Mich. 1943, 136 F. 2d 28, 54 Am. Bnk. Rep. N.S. 213.

QUESTIONS PRESENTED

The first question which the Petitioner respectfully brings to the Court is this: Can a United States District Court, or a Court of Appeals dismiss a suit for lack of jurisdiction in a case where the complaint or other pleadings aver one or several transgressions by the defendant of the Petitioner's rights and immunities specified in the Constitution? As for an example, if the petitioner has paid to the state a fine for speeding, can the state, acting alone, or in complicity with the petitioner's automobile insurance carrier impose a series of fines or penalties upon the petitioner, after the insurance carrier declares in writing that his reason for so doing was because the insured once paid a fine for speeding? Is the plea of autrefois convict under the Fifth Amendment not available to the insured to prevent the imposition of double jeopardy upon

him? Then there are allegations of the impairment of the obligation of a contract contrary to Art. I, Sec. X, Cl. I of the Constitution, and discrimination under a general and specific Civil Rights laws.

STATUTES INVOLVED

U.S. Constitution, Art. I, Sec. X, Cl.I, and Amendments I, IV, V, VII and XIV. Art. 1, Sec. 10, Cl. 1, 42 USC. Sec. 1983. 395 U.S. 711. 29 Vanderbilt L. Rev. 815(1976) Tit. 28, Sec. 1331 (a) and (b) U.S.C.A. Tit. 28, Sec. 1332 (a) (b) (c) and (d).

Petitioner offers his apologies to the Court for failing to list the citations of the Constitution and statutes separately.

STATEMENT OF THE CASE

The cause of this action arose in Hudspeth County, Texas on the morning of July 25th 1974, when the Petitioner was traveling by automobile from El Paso, Texas to his home in Odessa, Texas. The weather was clear, the highway was dry and driving conditions were good. On U.S. IS Highway No. 10, approximately five miles west of Sierra Blanca, Texas, Petitioner came upon a passenger

bus which bore a state of Georgia license plate, and which seemed to be occupied by tourists. The bus was traveling at an irregular rate of speed and in so doing it seemingly presented a traffic hazzard. The Petitioner kept alert for a chance to pass the bus, and when he saw the highway was clear ahead for a safe distance he increased his speed, and in so doing did exceed the 55-mile limit, but he did not attain a speed of 70 miles per hour which had recently been the legal rate of speed on that highway, and in the State of Texas for many years.

Presently Petitioner came upon a roadblock which was attended by a number of patrolmen who informed him that a helicopter in their service had reported that he had been driving in excess of the speed limit. This, petitioner did not deny, but offered an explanation which was ineffectual to change anything, only that he would hear from the "judge" in a few days.

Within a week a justice of the peace, who has a limited authority to administer some criminal laws in the state of Texas, sent Petitioner a statement that he had been assessed a fine of $27.50 for speeding, and requested payment thereof at once. Peti-

tioner mailed a cashier's check for that sum to the justice of the peace on August 2, 1974, and one year, seven months and 18 days expired before any further intelligence was received concerning the case.

Under date of 4-20-76, the State Farm Insurance Company sent Petitioner a statement containing the following information:

"Information within a Consumer Report furnished by Texas Department of Public Safety Austin, Texas has influenced our decision to increase the charge for your insurance. Your next billing will reflect this charge. If additional information is desired, contact your agent. Effective 6-14-76 James - Speed - 7-25-74."

On May 12, 1976 Petitioner addressed a letter to the State Farm Insurance Company in which he requested to be advised as to the source of its authority to impose an increase in his automobile insurance premium rate. Under date of May 20, 1976, a reply came, stating:

"Mr. Countryman, due to your speeding conviction of July 25, 1974, a fifteen percent surcharge will apply to your Bodily Injury/ Property Damage Liability coverage, your Personal Injury Protection coverage and your Collision coverage."

Since research failed to disclose any case where a court had held that an automobile

insurer could impose a surcharge upon his insured's automobile policy for no reason other than the fact that the latter had paid a fine for a minor traffic offense, whereas there was no prior obligation requiring the insured to pay such surcharge, the payment thereof can be nothing but the imposition of double jeopardy upon the insured because the first jeopardy furnishes the sole reason for the imposition of the second jeopardy upon him.

Viewing this scheme as highly discriminatory because it imposes the surcharge upon a certain class of policyholders who are less able to bear this extra cost of their insurance, the Petitioner decided to do something about it by invoking the aid of our courts.

Wherefore, Petitioner instituted suit in the United States District Court for the Western District of Texas Midland-Odessa Division against both, the State of Texas, and the State Farm Insurance Company. The purpose of joining both parties in the suit was to call attention to the complicity existing between the State Farm Insurance Company and the State Board of Insurance, an arm of the state government, by which the insurance board permits the insurance

company to assess members of a certain group of its policyholders with penalties because such members incurred penalties in traffic offenses. This scheme enables a private corporation to operate under color of law and tends to invest the fraudulent surcharges with auras of legality.

From the very first the Defendants' attorneys began filing motions to dismiss the case for want of jurisdictions. Finally, Chief Judge Adrian A. Spears of the District Court summarily dismissed the case.

Thereupon, the Petitioner filed his appeal to the United States Court of Appeals for the Fifth Circuit. In his first brief, the Petitioner requested permission of the Court to present an oral argument at the hearing, but the opposing attorneys opposed an oral argument, and their wishes prevailed. After denying the request for an oral argument, the Court of Appeals

wrongfully yielded to the suggestion of Mr. Pollan, attorney for the State of Texas, contained in his Brief Concerning Oral Argument that:

"The State of Texas respectfully submits that this cause should be considered for placement on the summary calendar, in accordance with rule 18 of the local rules of the United States Court of Appeals for the Fifth Circuit."

Accordingly, the Court of Appeals relegated the case to the so-called summary calendar, and promptly affirmed, without comment, the action of the District Court in summarily dismissing the case. The date of affirmance was November 6, 1978.

Under date of November 24, 1978, Petitioner filed with the United States Court of Appeals a Petition for Rehearing, or Reconsideration of the case, but it was denied without comment on January 17, 1979. after The Court of Appeals issued it final decision denying the application for rehearing, Petitioner filed this Petition for writ of Certiorari.

ARGUMENT

The United States Court of Appeals for the Fifth Circuit has refused to decide an important question of federal law which has

never been, but should be settled by this Court. That question involves the law of double jeopardy as it is enunciated in unmistakable language in the Fifth Amendment to the Constitution of the United States, and in the interpretative opinions of a wealth of legal authorities. In this bivouac of man's liberty is to be found the gravamen of Petitioner's complaint.

Sir William Blackstone considered it to be a universal maxim of the common law of England "that no man is to be brought into jeopardy of his life more than once for the same offense." This epochal remark can be regarded as an inspiration to the authors of the Bill of Rights, for eleven years after the death of the Great Barrister the Congress was to ratify that noble instrument, the Fifth Article of which proscribes a second punishment, yea! even a second trial for the same offense.

What defense the Defendants' attorneys have offered hardly touches the question of double jeopardy, but is based almost entirely upon jurisdictional matters that alone are impotent to solve the novella of this case. Their main briefs cite a total of 35 court decisions upon which they rely

for support of the fictional claim that the District Court was without jurisdiction to adjudicate a single averment in Petitioner's complaint. In addition to the 35 cases on which the Defendants expect the Court to depend for the basis of a judgment of affirmance the attorneys cite Article III, Section 2 of the Constitution, two Sections from Title 15, and two Sections from Title 28, U.S.C. But not one of these authorities supports the views of Defendants that the District Court was correct in summarily dismissing the case, or that the United States Court of Appeals for the Fifth Circuit was without error in affirming the judgment of the District Court which was a stark denial of Petitioner's constitutional rights.

In the case of Grabinger v. Conlisk, D.C. Ill. 1970, 320 F. Supp. 1213, affirmed C.A. 7th, 1972, 455 F.2d 490, it is said:

"When a claim is alleged to arise under the Constitution or laws of the United States, a federal court must not dismiss the claim for lack of jurisdiction unless it appears to a legal certainty, that the claim is fully insubstantial and frivolous insofar as the Constitution and laws of the United States are concerned."

When the Petitioner alleged in his claim

the following irrefragable state of facts:

"The District Court may declare acts of Congress unconstitutional, D.C. Texas, 1943, 49 F. Supp. 973 - Affirmed 141 F. 2d. 584."

On the 9th day of September' 1976, Petitioner filed an amendment to the original complaint in this case which contained two counts, XXII and XXIII. These counts challenged, respectively, the constitutionality of Section 1331 (a) and (b), and Secion 1332 (a), (b), (c) and (d) of Title 28, U.S.C.A. The challenge was supported by the argument that the point of unconstitutionality lies in the fact that the cited provisions of the congressional acts violate Article VII of the Bill of Rights in which it is provided that: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, ***". From this language it must be presumed that the authors of the amendment were determined to preserve the right of the people to invoke the aid of the courts to recover small sums which were commensurate with the economy of that day. Had the sum of $10,000.00 been named as the minimum amount necessary to preserve the right of trial by jury, the cry would have been

that the Defendant, the State of Texas, had imposed a fine upon him for a minor traffic infraction, and later had allowed its codefendant, the State Farm Insurance Company, to impose upon Petitioner a second fine for the same offense to run for a period of three years, and then had presented a reasonable argument in support of the legality of his claim that such second fine constituted double jeopardy, was that claim insubstantial and frivolous? If so, then one wonders what it takes to state a valid claim that will confer jurisdiction upon a federal court.

Federal district courts have jurisdiction over suits brought without the allegation or proof of any jurisdictional amount, so long as the complaint states a cause of action for deprivation of Civil Rights.- Douglas v. City of Jeannette, Pa. 63 S. Ct. 877. In the case of Fisher v. Cahill, 474 F.2d 991, it was held That: No jurisdictional amount is required in action under this section." (Title 42, Sec. 1983, U.S.C.A.)

The multisyllabic assertions by Defendants' attorneys that the courts are without jurisdiction of this case must fall by the wayside in the presence of the above and

heard throughout the land that the Congress had labored long and diligently to create a system of courts that would provide for the needs of the people for ages to come. But had the authors inserted in the great instrument of freedom, the provision of the Act of July 25, 1958, which requires that in most cases for the recovery of money or property, the value thereof must amount to $10,000.00 or more, the chances are that the people would have turned away from the ratifying conventions in disgust since in that day, as in this, thousands would be barred from asserting their just claims in court because they were less than the minimum required to invoke the jurisdiction of the courts.

Petitioner respectfully prays that the Court grant this Petition for Writ of Certiorari.

James H. Countryman

JAMES H. COUNTRYMAN, per se
214 West 5th. Room 204
Odessa, Texas 79761
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing petition and appendixes for Writ of Certiorari with the necessary sum in postage attached, have been mailed to each of the opposing counsel for the respondents, duly addressed to their respective offices in Austin, and Midland, Texas.

This the 16th day of July, 1979

James H. Countryman

JAMES H. COUNTRYMAN, per se
Attorney for Petitioner
214 West 5th.- Room 204
dessa, Texas 79761

APPENDIX

JAMES H. COUNTRYMAN

vs.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Defendants-Appellees

No._____

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

July 19, 1976

The Petitioner as Plaintiff, instituted a suit in the United States District Court for the Western District of Texas, at Midland, Texas, on the 19th day of July, 1976, to recover of the Defendants, the State of Texas, and the State Farm Insurance Company actual and punitive damages for unlawfully subjecting the Plaintiff to the penalties of double jeopardy, and for the deprivation of other fundamental rights secured to him

(APPENDIX Continued)

by the Constitution of the United States, such as equality before the law, the right to be free from subjection to ex post facto laws and laws imparing the obligation of contracts. Then there is a statutory enactment, the purpose of which was to prevent a citizen from entering a federal court with a claim for a monetary judgment that does not exceed the sum of $10,000.00 in amount or value. The Defendants' attorneys have persistently contended that this case does not meet that requirement, but whether that was the reason why the United States District Court for the Western District of Texas, at Midland, Adrian A. Spears, Chief Judge, entered a summary Judgment in the case on June 15, 1978 dismissing the case for the stated reason: "Dismissed due to subject matter jurisdiction." is not known.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DO NOT PUBLISH

No. 78-2432
Summary Calendar*

JAMES H. COUNTRYMAN,

Plaintiff-Appellant,

versus

THE STATE OF TEXAS and STATE FARM INSURANCE COMPANY,

Defendents-Appellees.

Appeal from the United States District Court for the Western District of Texas

(JANUARY 17, 1979)

Before RONEY, GEE and FAYE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1/]

Rule 18, 5 Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

[1/]See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DO NOT PUBLISH

No. 78-2432
Summary Calendar*

JAMES H. COUNTRYMAN,

Plaintiff-Appellant,

versus

THE STATE OF TEXAS and STATE FARM INSURANCE COMPANY,

Defendents-Appellees.

Appeal from the United States District Court for the Western District of Texas

(JANUARY 17, 1979)

Before RONEY, GEE AND FAYE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.1/

Costs are taxed against the plaintiff-appellant.

Rule 18, 5 Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

1/See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

ISSUED AS MANDATE: FEB. 8, 1979.

FILED
MAY 31, 1978
Dan W. Benedict, Clerk
By/s/ BP Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

JAMES H. COUNTRYMAN)(
)(
V.)(MO 76 CA 49
)(
THE STATE OF TEXAS AND)(
STATE FARM INSURANCE)(

ORDER

It appearing to the Court that the Plaintiff in this cause has failed to comply with the pre-trial schedule set forth in the Order of the Court dated December 27, 1976, has failed to move to extend the time for compliance with said order and has failed to file a timely response to the Court's letter of May 11, 1978 inquiring into the status of this cause, the Court is of the opinion that this cause may be in a posture for dismissal for want of prosecution pursuant to Rule 41 (b), Fed. R. Civ.P. It is, therefore,

ORDERED that the Plaintiff show cause in writing within ten (10) days from the date this Order is filed with the office of the United States District Clerk in Midland, Texas, why he has not complied with this Court's Order of December 27, 1976, and why he has not replied to this Court's letter of May 11, 1978. Should a response to this Order not be timely filed, the Court will entertain a motion on the part of the Defendents in this cause to dismiss the same for want of prosecution.

Entered at San Antonio, Texas this 29th day of May, 1978.

/s/ ADRIAN A. SPEARS
ADRIAN A. SPEARS
United States District Judge

A4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FILED
JUNE 19, 1978
Dan W. Benedict, Clerk
By /s/ BP Deputy

JAMES H. COUNTRYMAN)(
)(
V.)(MO 76 CA 49
)(
STATE OF TEXAS AND THE)(
STATE FARM INSURANCE)(
COMPANY

ORDER

Came on for consideration the motion to dismiss filed herein by the State of Texas and the motion to dismiss filed by the State Farm County Mutual Insurance Company of Texas. It appears to the Court, after an examination of said motions along with the plaintiff's motion to strike and the plaintiff's demurrer, that this Court is without jurisdiction over the subject matter of the claims asserted in plaintiff's complaint. It is, therefore,

ORDERED that this cause be and the same is hereby, DISMISSED.

Entered this 15th day of June, 1978.

/s/ ADRIAN A. SPEARS
ADRIAN A. SPEARS
United States District Judge

A5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND ODESSA DIVISION

JAMES H. COUNTRYMAN, PRO SE (sic)
VS. MO76CA49
THE STATE OF TEXAS and
THE STATE FARM INSURANCE COMPANY

J U D G M E N T

This action came on for consideration before the Court, Honorable Adrian A. Spears, United States District Judge, and the issues having been duly considered and the Court having rendered a decision on June 15, 1978, it is, therefore,

ORDERED AND ADJUDGED THAT THIS ACTION BE DISMISSED DUE TO SUBJECT MATTER JURISDICTION.

DATED AT MIDLAND, TEXAS THIS THE 20th DAY OF MAY, 1978. (sic).

WILLIAM G. PUTNICKI, INTERIM CLERK
UNITED STATES DISTRICT COURT

By /s/ Bobbye Pieper
Deputy U.S. District Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
April 16, 1979

Edward W. Wadsworth
Clerk

Tel 504-589-6514
500 Camp Street
New Orleans, La.
70130

Mr. James H. Countryman
214 W. 5th St., #204
Odessa, Texas 79761

No. 78-2432 - JAMES H. COUNTRYMAN, V. STATE OF TEXAS and STATE FARM INS. CO.
78-3316 - IN RE: JAMES H. COUNTRYMAN

Dear Counsel:

Under the revised Rule 21 (1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of Certiorari and, therefore, will not be routinely prepared by this office. 38 LW 3502. However, in the event this office is notified by the Supreme Court that the petition for writ of certiorari has been GRANTED,

the record will be certified to the Supreme Court.

A copy of the opinion, if any, judgment, or Rule 21 decision, and the denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this case.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By /s/ Sally Hayward
Deputy Clerk

enclosures

THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA

(Corporate seal and names of research personnel omitted)

December 16, 1976

James H. Countryman, Esq.
Attorney at law
214 W. 5th Room 204
Odessa, Texas

Re: Insurance Surcharge

Dear Mr. Countryman:

I have received your provocative inquiry and must admit that with the sources that are readily available and meager time that I can alot (sic) to doing research for members, I have been able to find very little.

I think your double jeopardy argument is imaginative and intriguing. What little material is available on the merit system seems to indicate, as you know, that it is not based on statistical evidence, thus, arguably making the surcharge another fine. The leading case on multiple punishment is North Carolina v. Pearce, 395 U.S. 711 (1969). You could look to the Civil Rights cases to define "state action". See also "Action under Color of State Law - Legislative Authorization of Private Action Resembling Public Function Constitutes Action Under Color of State Law," 29 Vanderbilt L. Rev. 851 (1976).

The second argument could be an equal protection challenge to the surcharge. I have enclosed an interesting recent Idaho case which may give you some ideas.

Thirdly, since the speeding conviction was based on a guilty plea, the plea could be challenged as not having been knowingly made. See comprehensive article at 71 F.R.D. 235-333 (Oct. 1976).

Sincerely,

/s/ Christina Wolfe
Christina Wolfe
Assistant Editor
The Association of Trial Lawyers of America
CW:cy

THE ASSOCIATION OF
TRIAL LAWYERS OF AMERICA

20 Garden Street, Cambridge, Massachusetts
02138 617/868-6900

February 7, 1977

President
Robert G. Begam
1400 Arizona Title Building
Phoenix, Zrizona 85333
(602) 254-6071

Mr. James H. Countryman
214 West Fifth Room 204
Odessa, Texas 79761

Dear Mr. Countryman:

Your theory is both provocative and imaginative

I would think that one of our ATLA lawyers in Odessa or one of the neighboring communities would be able to associate with you in the processing of the case. I really don't know what more I can do beyond referring you to the ATLA director. Phil Gauss, Executive Director of the Texas Trial Lawyers Association in Austin, Texas, might have some specific suggestions, although obviously there will be no one who really has any background or specialized experience in the field in which you need help, since you are plowing new ground.

In short, if I were in your position I would pick up the phone and start calling some of the other ATLA lawyers in Odessa until I found one who is interested in getting involved.

Good luck on your worthy cause.

Best regards

/s/ Robert G. Begam

Robert G. Begam

Ned Price
Member

Hugh C. Yantis, Jr.
Chairman

Durwood Manford
Member

(State Seal)

Mrs. Pat Wagner
Chief Clerk

STATE BOARD OF INSURANCE
1110 San Jacinto
AUSTIN, TEXAS 78786

June 16, 1978

Mr. James H. Countryman
214 W. 5th, Room 204
Odessa, Texas 79761

Re: Automobile Insurance
State Farm Insurance Company

Dear Mr. Countryman:

In furtherance of my correspondence of May 25, 1978, attached is a copy of State Farm Mutual Automobile Insurance Company's letter of May 31, 1978 wherein you will find that the premium difference is due to your wife's car being placed in the State Farm Insurance Group's rate regulated company and your coverage bein placed in the County Mutual insurer. Additionally, according to the Company you have a chargeable accidnt and traffic conviction on your record.

State Farm Mutual Automobile Insurance Company is required to use the automobile in-

surance rates and rating plans prescribed by this Board.

County Mutual insurers have a statutory exception from the Board's rate making authority. County Mutual insurance companies are legally authorized to file the rates and rating plans which the management of each particular County Mutual wishes to use. This Board must accept such filings as no disapproval authority is vested in the Board.

County Mutual insurers specialize in writing insureds that are unable to secure automobile insurance at State Board of Insurance prescribed rates.

The Texas automobile insurance laws give the State Board of Insurance the authority to prescribe the automobile insurance rates, rating plans and policy forms which must be used by every licensed insurer subject to the Board's rate making jurisdiction. However, the insurance laws do not give the Board the authority to tell a company what risks it must accept on the business voluntarily submitted to the company.

Each company's management is allowed to set their own underwriting requirements on voluntary (i.e., not assigned risk) business. Therefore, if State Farm Mutual Automobile Insurance Company did not wish to insure you in 1971 due to your age, this Board could not require the company to do otherwise.

(Letter concluded on next page)

Yours very truly,

COMMISSIONER OF INSURANCE

By: /s/ D.E. O'Brien

D.E. O'Brien, Director
Automobile, Bond, Burglary,
Plate Glass and Title Insurance
Casualty Division

DEO'B:ss

Attachment

State Farm
Insurance

A14

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

May 11, 1978

Southwest Texas Division
9001 N. Interregional Hwy

Charles Worth CPCU
Division Manager

D.E. O'Brien, Director
Automobile, Bond, Burglary
Plate Glass and Title Insurance
Casualty Division
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Re: Automobile Insurance Rates
Mr. James H. Countryman

Dear Mr. O'Brien:

The answers to Mr. Countryman's question are:

1. The premium due on 6-14-78 was increased over the previous term because Mr. Countryman had a chargeable accident and violation on 11-1-77. This is a Texas County Mutual policy and the surcharge for an accident and violation is 35% on the applicable coverages.

2. The higher valued Chrysler, New Yorker owned by the wife carries a lowyer premium because Mrs. Countryman is insured in State Farm Mutual rather than State Farm County Mutual of Texas, and has no surcharges.

Mrs. Countryman was age 64 when she was first insured on June 14, 1972 making her eligible

A15

for State Farm Mutual.

Mr. Countryman was age 74 when he first insured on May 11, 1971 thus requiring placement in our Texas County Mutual.

Sincerely,

/s/ Charles Wirth
Charles Wirth, CPCU
Division Manager.

CW: dg

JAMES H. COUNTRYMAN
214 W. 5th Room 204
Odessa, Texas 79761

June 28, 1978

Mr. Charles Wirth
Division Manager
State Farm Insurance Company
9001 interregional Highway
Austin, Texas 78787

Dear Mr. Wirth:

A letter received by me from D.E. O'Brien, representing the Commissioner of Insurance, and dated June 16, 1978, contained the following statement statement which was attributed to your company:"Additionally, according to the company you have a chargeable accident and traffic conviction on your record." Enclosed with the O'Brien letter was a copy of your letter to him on May 31,1978 containing the following reference to me: "The premium due on 6-14-78 was increased over theprevious term because Mr. Countryman had a chargeable accident and violation on 11-1-77."

The so-called accident which you referred to as having taken place on 11-1-77 occurred on 11-2-77, and when the citation was filed against me in the Municipal Court of Odessa, Texas I demanded and was granted a jury trial. The jury was empaneled on the morning of February 9, 1978, and the case proceeded to trial. I proved to the jury that the prosecution was a malignant fraud. And the jury believed me and rendered a verdict of acquittal.

So, Mr. Wirth you are a liar. I have never been convicted of a traffic violation involving the slightest injury to any living being or item of property in all my 60 years of driving automobiles. The present instance is the only time in my life that I have ever been accused of a traffic offense except twice for speeding.

I am returning your premium notice showing you have extended the date for renewal of my insurance until tomorrow, June 29, 1978. But there is not a chance. Your company has robbed me of the last dime it will ever get from me.

Sincerely,

/s/ James H. Countryman

CC; To State Board of Insurance
H.B. Copeland

INSURANCE STUDY BY FEDERAL INSURANCE ADMINISTRATION

By G. DAVID WALLACE

A federal study has found that millions of people apparently are excluded for no sound reason from obtaining the insurance they need to drive a car, buy a home or protect themselves from catastrophic losses.

The study said millions of other so-called high-risk individuals can get insurance only by paying inflated premiums, even though (illigible type) "clean" risks by industry standards.

For "clean" drivers the surcharge amounts to a national average of 86 per cent a year on insurance premiums, the study estimated.

The report of the Federal Insurance Administration, an arm of the Department of Housing and Urban Development, recommended that the people be guaranteed the right by law to buy insuran , with rates based on governmentregulated (sic) classifications.

But the study avoided suggesting any federal role in the process, leaving regula-

tion to the state agencies which have traditionally watched over the industry.

We're trying to avoid it because of our faith in the private insurance system, in the tradition of state regulation, said George K. Bernstein, federal insurance Administrator.

The report said that the latest count, in 1967, showed 20 per cent of the nation's drivers were not covered by insurance and a total of 4 million drivers are in various state assignedrisk (sic) plans.

The assigned risk plans are supposedly reserved for those drivers who don't qualify as acceptable risks for conventional commercial insurance. Such drivers pay $68 more than the national average $79 a year for the basic auto insurance which the conventionally insured drivers buy.

Yet 3. 3 million of the assigned risk drivers haven't had an accident within three years and are thus "clean" within the definition applied by commercial insurers, the report said. And 2.7 million

neither had been involved in an accident nor committed any chargeable driving violations within three years.

The report said a similar situation exists for home owners and property insurance.

Twenty-seven states maintain FAIR plans which provide access to federally supported riot insurance programs. FAIR stands for Fair Access to Insurance Requirements and is supposedly reserved for otherwise uninsurable property owners.

(Published 11-3-74)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

JAMES H. COUNTRYMAN	
V.	CIVIL
THE STATE OF TEXAS, AND THE	ACTION NO.
STATE FARM INSURANCE COMPANY	MO 76-CA-49

AMENDMENT TO ORIGINAL COMPLAINT

COMES NOW THE PLAINTIFF and begs leave of this Honorable Court to amend his original complaint which has been filed, served, and is now pending in this Court. The amendment is effective by adding the following two Counts, No. XXII and No. XXIII, respectively, to the Complaint.

XXII

The Plaintiff avers that Title 28, Section 1331 (a) and (b) of the United States Code Annotated, being a law enacted by the Congress of the United States, is in violation of the Constitution of the United States, and more especially of Article VII of the Bill of Rights, and should be declared so by this Court. The point of unconstitutionality lies in the fact that the said Act of

Congress bars the door of the Federal Courts to all parties whose monetary demands of the Defendant do not amount to $10,000.00, and whose controversy does not arise under the Constitution and Laws of the United States. Whereas, Article VII of the Bill of Rights fixes no amount of money, or value, that the plaintiff must demand in order to invoke the jurisdiction of a Federal Court, but only where the demand is for $20.00 or more he may demand a jury trial.

XXIII

The Plaintiff avers that Title 28, Section 1332 (a) (b) (c) and (d) of the United States Code Annotated, being a law enacted by the Congress of the United States, is a violation of the Constitution of the United States, and more especially of Article VII of the Bill of Rights, and should be declared so by this Court. The point of unconstitutionality lies in the fact that the said Act of Congress bars the door of the Federal Courts to all parties whose monetary demands of the Defendant do not amount to $10,000.00, and there also is not a diversity of

citizenship between the parties plaintiff and defendant. Whereas, Article VII of the Bill of Rights fixes no amount of money or value, that the plaintiff must demand in order to invoke the jurisdiction of a federal court, but only where the demand is for $20.00 or more can he request a jury trial.

The question before the Court is whether a citizen's rights and immunities, which are secured to him by the Constitution of the United States, can be swept away or interdicted by courts that are creatures of the Constitution. Because in his claim for a benefit, or for the redress of a grievance, the citizen was able to prove no more than $9,999.00 as the value of his benefit, or the worth of his demand for the redress of a grievance, he had no standing in court.

Whereras, another citizen who had suffered the same, or a like grievance, was able to prove that the monetary value of his claim, or the worth of his demand for the redress of a grievance, amounted to $10,001.00, a sum of money barely within the bounds of the law which Congress insinuated into the Constitution where, unfortunately, it still

lies as a stumbling block to equal justice under law.

The Petitioner respectfully represents to the Court that this plea for a writ of certiorari is simply a petition for a redress of a grievance within the purview of the First Amendment to the Constitution of the United States, unless of course, it can be said that people assembled have rights that are denied to individuals standing alone.

Supreme Court, U. S.
FILED
AUG 17 1979
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

* * *

NO. 79-112

* * *

JAMES H. COUNTRYMAN
Petitioner,

V.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Respondents.

* * *

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

* * *

BRIEF IN OPPOSITION

* * *

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED L. HARTLEY
Executive Assistant

THOMAS M. POLLAN
Assistant Attorney General

JOHN ROWLAND COOK
Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-4481

Attorneys For Respondent

SUBJECT INDEX

Page

INDEX OF AUTHORITIES ii

OPINION BELOW 1

JURISDICTION 1

QUESTIONS PRESENTED 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

ARGUMENT AND AUTHORITIES 3

I. Petitioner's contention that Congress has no authority to restrict the jurisdiction of the inferior federal courts is without merit. 3

II. The Court of Appeals properly affirmed the judgment of the district court dismissing petitioner's suit on the ground that the court was without jurisdiction over the subject matter of the claims asserted in plaintiff's complaint 5

CONCLUSION 9

CERTIFICATE OF SERVICE 11

APPENDIX

Title 15, United States Code, Section 1012 ..... A-1

Title 28, United States Code, Section 1331 ..... A-1

Title 28, United States Code, Section 1332 ..... A-1

INDEX OF AUTHORITIES

Page

Anderson v. Papillion, 445 F.2d 841 (5th Cir., 1971) 6

Bell v. Hood, 327 U.S. 678, 682-683 (1946) 7

Cuyahoga River Power Co. v. Northern Ohio Traction and Light Co., 252 U.S. 388, 399 (1920) 7

Goldsmith v. Sutherland, 426 F.2d 1395, 1398 (6th Cir. 1970), cert. denied 400 U.S. 960 (1970) 5

Harlan v. Pennsylvania Railroad Co., 180 F.Supp. 725, 726 (W.D. Pa. 1960) 4

Kline v. Burke Construction Co., 260 U.S. 226, 233-34 (1922) 4

Lockerty v. Phillips, 319 U.S. 182, 187 (1943) 4

North Pacific S.S. Co. v. Soley, 257 U.S. 216, 221 (1921) 9

Postal Telegraph Co. v. Alabama, 155 U.S. 482, 487 (1894) 6

Shelton v. Sill, 49 U.S. (8 How.) 441, 449 (1849) 4

Statutes:

15 U.S.C. §1011 7
15 U.S.C. §1012(a) 2, 7
28 U.S.C. §§1331(a) and 1332(a) 2, 4, 5, 6, 8, 9

Other:
Federal Rules of Civil Procedure
Rule 4(d)(6) 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

* * *

NO. 79-112

* * *

JAMES H. COUNTRYMAN

Petitioner,

V.

THE STATE OF TEXAS AND THE STATE FARM INSURANCE COMPANY

Respondents.

* * *

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

* * *

BRIEF IN OPPOSITION

OPINION BELOW

There is no opinion below as the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the United States District Court for the Western District of Texas without a written opinion pursuant to Rule 21 of the Local Rules of the United States Court of Appeals for the Fifth Circuit. The disposition of the case is reported in *Countryman v. State of Texas*, 588 F.2d 1355 (5th Cir. 1979) [Table].

JURISDICTION

The formal jurisdictional requisites of the petition and its timely filing would appear to be satisfied

although respondent disputes Petitioner's contention that any rights guaranteed by the Constitution of the United States have been denied.

QUESTIONS PRESENTED

1. Whether the ten thousand dollar jurisdictional amount provided for in 28 U.S.C. §§1331 and 1332 is constitutional?

2. Whether the Petitioner, Mr. Countryman, as plaintiff below, presented allegations that were sufficient to invoke the jurisdiction of the Federal District Court?

STATUTORY PROVISIONS INVOLVED

Although Petitioner contends that many constitutional and statutory provisions are involved, Respondent submits that 15 U.S.C. §1012(a) and 28 U.S.C. §§1331(a) and 1332(a) are the only material statutory provisions involved. A copy of these statutory provisions is found in the appendix herein.

STATEMENT OF THE CASE

The Petition for Writ of Certiorari results from the affirmance by the United States Court of Appeals for the Fifth Circuit of the judgment of the United States District Court for the Western District of Texas, Midland-Odessa Division, dismissing petitioner Countryman's lawsuit for lack of subject matter jurisdiction.

This action was filed by Petitioner Countryman on July 19, 1976. In response to his complaint, the State of Texas filed its motion to dismiss, and State Farm County Mutual Insurance Company of Texas filed its answer, which contained a request that the complaint be dismissed. Petitioner Countryman countered by filing a motion to strike in response to the State's motion to

dismiss and a demurrer in response to the answer filed by State Farm County Mutual Insurance Company of Texas.

The United States District Court entered an order, on July 15, 1978, dismissing the cause of action for want of subject matter jurisdiction.

Respondent State of Texas therefore presents to the Court a statement of the case concentrating upon the procedural nature of the case--dismissal on jurisdictional grounds, rather than upon substantive legal questions arising from a trial on the merits. However, an underlying basis for Petitioner Countryman's lawsuit is to be found in his statement of the case (Petition for Writ of Certiorari, pages 4 through 9).

Petitioner Countryman apparently was stopped for speeding and was duly cited for the offense. He paid the fine for speeding that had been assessed against him. Subsequently, the insurance company that insured Petitioner Countryman increased his premium for insurance coverage as a result of his speeding conviction. Petitioner Countryman's response was to proceed to federal district court to seek redress for such action, even though his claim was primarily contractual and involved no substantial federal question.

ARGUMENT AND AUTHORITIES

I.

PETITIONER'S CONTENTION THAT CONGRESS HAS NO AUTHORITY TO RESTRICT THE JURISDICTION OF THE INFERIOR FEDERAL COURTS IS WITHOUT MERIT.

The primary focus of the Petition for Writ of

Certiorari is that Congress has no authority to limit the jurisdiction of the inferior federal courts and that the imposition of a ten thousand dollar jurisdictional amount is therefore unconstitutional. This proposition is set out at page 12 of the Petition for Writ of Certiorari. In challenging the constitutionality of 28 U.S.C. §§1331 and 1332, it is apparent that Petitioner Countryman fails to understand the power of Congress to limit and define the jurisdiction of the inferior federal courts. Only the jurisdiction of the Supreme Court of the United States is derived directly from the Constitution. The Constitution simply gives to inferior courts the capacity to take jurisdiction where such jurisdiction is conferred by Congress. Consequently, the inferior courts are subject to the statutes which prescribe their jurisdiction and such statutes cannot be in conflict with the Constitution unless they confer upon such courts powers not enumerated therein. *Shelton v. Sill*, 49 U.S. (8 How.) 441, 449 (1849).

Where such jurisdiction is given, it can also be taken away. *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-34 (1922). This principle was aptly stated in *Harlan v. Pennsylvania Railroad Co.*, 180 F. Supp. 725, 726 (W.D. Pa. 1960), wherein the court stated:

> The Constitution of the United States vests in Congress the power to create inferior courts which includes the United States District Court, Article III, Section I, Constitution of the United States. It would follow, therefore, as a necessary corollary that since Congress has been empowered to create United States District Courts, Congress can eliminate them. The power to create is the power to destroy. The conclusion must inevitably follow that since Congress can eliminate the United States District Courts, it can limit and define their jurisdiction.

See also, *Lockerty v. Phillips*, 319 U.S. 182,187 (1943).

In *Goldsmith v. Sutherland*, 426 F.2d 1395, 1398 (6th Cir. 1970), cert. denied 400 U.S. 960 (1970), the court specifically rejected an attack on the constitutionality of 28 U.S.C. §1331 as being "without merit since the federal district courts are courts of limited jurisdiction and have only such jurisdiction as Congress may confer upon them by statute."

The effect of these cases is to prevent Petitioner from invoking the jurisdiction of a federal district court merely by asserting that the statutes by which Congress conferred jurisdiction upon the district courts are unconstitutional.

II.

THE COURT OF APPEALS PROPERLY AFFIRMED THE JUDGMENT OF THE DISTRICT COURT DISMISSING PETITIONER'S SUIT ON THE GROUND THAT THE COURT WAS WITHOUT JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIMS ASSERTED IN PLAINTIFF'S COMPLAINT.

Federal courts are courts of limited jurisdiction, created to adjudicate only those legal causes clearly falling within their jurisdiction. Federal courts may entertain actions where litigants are of diverse state citizenship, provided that the requisite jurisdictional amount is present. In the instant cause, the State of Texas submits that there is a total lack of diversity of citizenship among the litigants, there is an absence of any federal question, there is a clearly inadequate amount in controversy, and there has been faulty service of process.

A. No Diversity Jurisdiction

Jurisdiction over citizens may be gained by the federal courts when the parties to the action are of diverse state citizenship and the amount in controversy exceeds ten thousand dollars. The citizenship of the parties must reflect a "pure" diversity, which requires that none of the plaintiffs or defendants in the suit may share common state citizenship. *Anderson v. Papillion*, 445 F.2d 841 (5th Cir., 1971). In this regard, it must be remembered that the diversity statute, 28 U.S.C. §1332, neither sanctions a suit against a state nor contemplates that a state is a citizen within the statutory term. *See Postal Telegraph Co. v. Alabama*, 155 U.S. 482, 487 (1894).

The pleadings in the district court established that Petitioner Countryman was insured by a Texas chartered insurance company, State Farm Mutual Insurance Company of Texas, rather than by State Farm Insurance Company, an Illinois chartered company, as originally alleged by Petitioner. A review of the correspondence in the appendix to the Petition for Writ of Certiorari, especially pages A14-A15, demonstrates the Texas company was the insurer. Therefore, the dispute involves parties as to whom Petitioner cannot establish a diversity of citizenship.

B. No Federal Question Involved

A second deficiency in the Petitioner's attempt to gain access to the federal courts lies in the absence of a federal question among his asserted claims. Federal courts traditionally deny jurisdiction in cases where there has been a frivolous assertion of the existence of a nexus between the Constitution and the subject matter of a dispute. To give a federal court jurisdiction, the

question must be substantial. *Cuyahoga River Power Co. v. Northern Ohio Traction and Light Co.*, 252 U.S. 388, 399 (1920).

Contrary to Petitioner Countryman's claims, original federal jurisdiction over this action cannot be gained simply by arguing that surcharges levied by a private insurance company constitute ex post facto laws, cruel and unusual punishment, and infringements on double jeopardy protections.

Petitioner Countryman has presented frivolous claims couched in terms of constitutional questions; these claims actually involve nothing more than a question of contract law having no connection with any federal question. It is well-settled that a federal court may dismiss for want of jurisdiction where the alleged claim under the Constitution or federal statutes appears to be immaterial and is made solely for the purpose of obtaining jurisdiction where such claim is insubstantial and frivolous. *Bell v. Hood*, 327 U.S. 678, 682-683 (1946).

Petitioner apparently contends that the State of Texas has deprived him of his constitutional rights through its regulation of the business of insurance. Petitioner fails to distinguish between his conviction for speeding under the criminal law and the higher insurance premium he must pay for his automobile insurance because his driving record indicates that he is in a higher risk category as a result of his speeding conviction.

The business of insurance is one of the most extensively regulated activities in Texas. The federal government, in adopting the McCarran-Ferguson Act, 15 U.S.C. §1011 et seq., left to the various states the regulation of insurance. Specifically, in 15 U.S.C. §1012, Congress provided:

> (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

Under Petitioner's contract with his insurer, he could be charged an increased premium, as a surcharge, if his driving record reflected adverse factors indicating he was a greater risk to insure. Because of his poor driving record, and the increase in his insurance premium, Petitioner now attempts to fabricate a federal question by alleging that the fine he paid for his speeding conviction should bar any attempt to increase his insurance premium, and the State of Texas, by failing to prohibit such increase subjected him to double jeopardy and impaired his right to contract.

If Petitioner Countryman's frivolous allegations of constitutional questions are stripped from his complaint, only the following remains: (1) Petitioner Countryman questions his contractual rights under his insurance policy, and (2) he questions the manner in which the State of Texas regulated the business of insurance. Neither complaint rises to a federal question.

Consequently, in the absence of a substantial federal question, the Petitioner cannot invoke the jurisdiction of a federal court, and he must seek redress in the state court system.

C. Lack of Jurisdictional Amount

To invoke federal jurisdiction over a controversy, it is also necessary for the plaintiff to assert, in good faith, a claim in excess of ten thousand dollars. 28 U.S.C. §§1331, 1332. The State of Texas submits that the amount of actual damages suffered as a result of the insurance surcharges is less than one hundred dollars. Consequently, Petitioner Countryman cannot in good

faith satisfy the jurisdictional requirement, and the federal district court properly dismissed for want of jurisdiction. *North Pacific S.S. Co. v. Soley*, 257 U.S. 216, 221 (1921).

Petitioner's attack upon the constitutionality of 28 U.S.C. §§1331 and 1332 for setting a ten thousand dollar jurisdictional amount demonstrates his inability to present a claim falling within this amount.

D. Proper Service Not Obtained

Even if Petitioner could have presented a valid federal question, the district court had further reason to refuse to exercise its jurisdiction in this action, because Petitioner Countryman has failed to comply with rule 4(d)(6) of the Federal Rules of Civil Procedure, which requires a plaintiff to serve the chief executive of an agency made a party to a suit.

Although Petitioner Countryman named the State of Texas as a party to this action, a review of his complaint reveals that the proper party was the State Board of Insurance of Texas, whose chief executive officer is the Commissioner of Insurance. The Petitioner's failure to designate the proper party has resulted in service upon the Governor of Texas, whose office has no authority over the subject matter in controversy.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED HARTLEY
Executive Assistant

THOMAS M. POLLAN
Assistant Attorney General

JOHN ROWLAND COOK
Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-4481

CERTIFICATE OF SERVICE

I, J. Rowland Cook, Assistant Attorney General of Texas, do hereby certify that three copies of the above and foregoing Respondent's Brief in Opposition have been deposited in the United States Mail, air mail, certified, postage prepaid, on this the ___ day of August, 1979, to each of the following addresses: Mr. James H. Countryman, Petitioner, 214 West 5th Street, Room 204, Odessa, Texas 79761, and Mr. Harrell Feldt, Stubbeman, McRae, Sealy, Laughlin & Browder, P.O. Box 1540, Midland, Texas 79702.

JOHN ROWLAND COOK

APPENDIX

TITLE 15, United States Code

§1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

TITLE 28, United States Code

§1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

§1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between-

(1) citizens of different States;
(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

DISTRIBUTED
AUG 23 1979

Supreme Court, U.S.
FILED
AUG 23 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-112

JAMES H. COUNTRYMAN,
Petitioner,

versus

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY,
Respondents.

REPLY OF RESPONDENT, STATE FARM COUNTY MUTUAL INSURANCE COMPANY OF TEXAS, TO PETITION FOR WRIT OF CERTIORARI

STUBBEMAN, McRAE, SEALY,
LAUGHLIN & BROWDER

HARRELL FELDT
P. O. Box 1540
Midland, Texas 79702

Attorneys for Respondent
State Farm County Mutual
Insurance Company of Texas

SCOFIELDS' QUALITY PRINTERS, P. O. BOX 53096, N. O., LA. 70153 - 504/822-1611

TABLE OF CONTENTS

Page

Statement 1

Grounds for Opposition of the Petition 3

Certificate of Service 14

LIST OF AUTHORITIES

CASES:

Carroll v. General Medical Company, 53 F.R.D. 349 (D. Neb. 1971) 10

Central States Co-ops. v. Watson Bros. Transp. Co., 165 F.2d 392 (7th Cir., 1948), vacated 337 U.S. 951 7

Dinneen v. Williams, 219 F.2d 428 (9th Cir., 1955) 8

Fawvor v. Texaco, Inc., 387 F.Supp. 626 (E.D. Tex. 1975) 10

Goldsmith v. Sutherland, 426 F.2d 1395 (6th Cir., 1970), cert. den. 400 U.S. 960 7

Hamilton v. Hartford Acc. & Indem. Co., 425 F.Supp. 224 (D.C. E.D. Pa. 1977) 11

Jackson v. Kuhn, 254 F.2d 555 (8th Cir., 1958) 4

James v. Daley & Lewis, 406 F.Supp. 645 (D. Delaware 1976) 9,10

Johnson v. State, 235 S.W.2d 550 (Ga. App. 1977) 13

LIST OF AUTHORITIES (Continued)

Page

Jones v. Landry, 387 F.2d 102 (5th Cir., 1967) ...11

Kenney v. Commissioner of Internal Revenue, 111 F.2d 374 (5th Cir., 1940) 13

Leary v. United States, 268 F.2d 623, 626 (9th Cir., 1959) 4

Lockerty v. Phillips, 319 U.S. 182 (1943) 7

McCartney v. State of West Virginia, 156 F.2d 739, 741 (4th Cir., 1946) 8

McDowell v. United States, 159 U.S. 596, 598-599 (1895) 4

Meicler v. Aetna Casualty and Surety Co., 506 F.2d 732 (5th Cir., 1975) 5

G. C. Merriam Co. v. Syndicate Pub. Co., 237 U.S. 618 (1915) 7

Oskierko v. Southwestern Horizons, Inc., 60 F.R.D. 365 (N.D. Ill. 1973) 10

Poresky, Ex parte, 290 U.S. 30 (1933) 7

Quaker State Dyeing & Finish. Co. v. ITT Terryphone Corp., 461 F.2d 1140 (3rd Cir., 1972) 10

Rex Trailer Company v. United States, 350 U.S. 148 (1956) 13

Skelly Oil Company v. Phillips Petroleum Co., 339 U.S. 667 (1950) 7

LIST OF AUTHORITIES (Continued)

Page

State of New Hampshire v. National Broadcasting Company, 222 F.Supp. 915, aff'd 324 F.2d 506 (1st Cir., 1963) 7

Svejcara v. Whitman, 487 P.2d 167 (N.Mex. App. 1971) 13

Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939) 8

United States v. Barger, 458 F.2d 396 (9th Cir., 1972) 13

Walker v. Bank of America National Trust & Sav. Ass'n, 268 F.2d 16 (7th Cir., 1959), cert. den. 361 U.S. 903, reh. den. 361 U.S. 941 8

UNITED STATES CONSTITUTION:

Article III, Section 2 6,7

STATUTES:

Title 15, United States Code, §1012 5

Title 28, United States Code, §1331 .....2,4,5, 6,7,11

Title 28, United States Code, §1332 ..... 2,4,5,6, 7,9,11

Title 42, United States Code §1983 7

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. 79-112

JAMES H. COUNTRYMAN,
Petitioner,

versus

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY,
Respondents.

REPLY OF RESPONDENT, STATE FARM COUNTY MUTUAL INSURANCE COMPANY OF TEXAS, TO PETITION FOR WRIT OF CERTIORARI

STATEMENT

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This action was commenced on July 19, 1976, by the filing of the Original Complaint by the Petitioner. The

Respondent, State Farm County Mutual Insurance Company of Texas, entered its appearance by filing an answer on August 25, 1976, wherein the Respondent stated as affirmative defenses that the District Court was without subject matter jurisdiction and that the Petitioner's complaint failed to establish jurisdiction under the provisions of Title 28, United States Code, §1331 and §1332. The Respondent, The State of Texas, filed its Motion to Dismiss and Brief in Support of Motion to Dismiss on August 25, 1976, alleging the same grounds for dismissal, together with an attack on the manner in which jurisdiction over the State of Texas had been attempted. Thereafter, the Petitioner filed pleadings in response to the respective motions to dismiss filed by the Respondents, and on June 5, 1978, the District Judge signed an Order dismissing the Petitioner's Complaint. On June 20, 1978, judgment was filed on the basis of the District Court's Order. The Order of the trial court was affirmed by the United States Court of Appeals for the Fifth Circuit on January 17, 1979. From this decision of the Court of Appeals, the Petitioner has filed his Petition for Writ of Certiorari to this Honorable Court.

Except for the pleadings themselves, the briefs submitted in support thereof, and the exhibits attached to such pleadings, no evidence was considered by the District Court by reason of the fact that prior to considering Petitioner's Complaint on the merits, the District Court ruled that it was without subject matter jurisdiction to hear the action alleged in the Petitioner's Original Complaint.

The Respondent, State Farm County Mutual Insurance Company of Texas, would note that in the Petitioner's Brief filed in this Court, in those portions of his brief styled "Statement of the Case", the Petitioner describes in narrative form the allegations of fact which he believes support his cause of action. The Respondent, State Farm County Mutual Insurance Company of Texas, believes that such a dissertation of facts is inappropriate, since the District Court determined the issue of whether or not it had jurisdiction to hear the cause, and finding a lack of jurisdiction, dismissed the case without considering the merits of the factual matters alleged. For this reason, this Respondent does not attempt to reply to or refute any of the fact allegations contained in the Petitioner's Brief.

GROUNDS FOR OPPOSITION OF THE PETITION

A. The District Court properly dismissed the Petitioner's cause of action by reason of the fact that the District Court was without jurisdiction over the subject matter of the claims asserted by Petitioner.

The Petitioner argues that a federal district court is empowered to hear any cause of action asserted by a citizen of the United States. To the contrary, the Constitution of the United States, together with the statutes passed by Congress, unquestionably establish that federal district courts have limited jurisdiction, and a person seeking redress in federal court must invoke jurisdiction under an applicable statute. Those stat-

utes allowing jurisdiction over federal questions and in cases involving diversity of citizenship, to-wit: Title 28, §1331 and §1332 respectively, are constitutional.

The Petitioner has failed to allege an action which permits a District Court to exercise federal question jurisdiction. The Petitioner has failed to plead or show complete diversity of citizenship between himself and both of the Respondents. State Farm County Mutual Insurance Company of Texas is a corporation formed under the laws of the State of Texas and has its principal place of business at Dallas, Texas. The Petitioner, being a citizen of the State of Texas also, lacks diversity of citizenship to bring the instant action. Additionally, the State of Texas shares common citizenship with both the Petitioner and the Respondent, State Farm County Mutual Insurance Company of Texas.

Under both of the foregoing sections of Title 28, United States Code, a litigant must establish that the action is for a sum in excess of $10,000. In the present case, the damages alleged to have been sustained to the Petitioner which are actionable do not exceed the sum of $100.

It is settled beyond any question that federal courts are courts of limited jurisdiction and may not hear actions in the absence of congressional statutes specifically conferring power to adjudicate. *Jackson v. Kuhn*, 254 F.2d 555 (8th Cir., 1958); *Leary v. United States*, 268 F.2d 623, 626 (9th Cir., 1959); *McDowell v. United States*, 159 U.S. 596, 598-599 (1895).

In the instant case, a reading of the Petitioner's pleadings filed in the District Court reveals that his disagreement with the Respondents stems from the operation of Texas state statutes and regulations pertaining to automobile insurance. Under the terms of the McCarran-Ferguson Act, and specifically §1012 of Title 15, United States Code, the right to regulate the business of insurance is reserved to the several states, including Texas. Accordingly, there is no federal question jurisdiction which authorizes the District Court to entertain the merits of the Petitioner's claim, and dismissal was appropriate and proper. *Meicler v. Aetna Casualty and Surety Co.*, 506 F.2d 732 (5th Cir., 1975).

In the Petitioner's Original Complaint (Record, 2-13), the Petitioner alleged generally that jurisdiction was invoked by reason of federal question jurisdiction and diversity of citizenship (Record, 2-3). In a later pleading, to-wit: Amendment to Original Complaint, made a part of the record by the letter order of the Clerk of the Fifth Circuit filed on August 25, 1978, the Petitioner contests the constitutionality of Title 28, United States Code §1331 and §1332.

Section 1331, Title 28, United States Code, provides in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions wherein the amount in controversy exceeds the sum or value of $10,000, exclusive of interest and

costs *and arises under the constitution* [or] *laws . . . of the United States.*" (Emphasis added)

Section 1332, Title 28, United States Code, provides in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between — (1) citizens of different states;"

Petitioner implies that he has an absolute right to bring his action in federal court and that the limitations imposed by §1331 and §1332, respectively, violate constitutional rights. However, it is abundantly clear from the provisions of Article III of the United States Constitution that the scope of lower federal courts' jurisdiction is left to Congress. It is likewise clear from the provisions of Article III, Section 2, of the United States Constitution, that suits between parties who are citizens of the same state are not within the jurisdiction power conferred by the framers of the Constitution. If any question exists from the terms of the Constitution itself, the case law establishing the constitutionality of the foregoing federal statutes pretermits any further argument.

The limiting jurisdiction requirements of §1331 itself do not constitute an abridgement of con-

stitutional rights. *Goldsmith v. Sutherland,* 426 F.2d 1395 (6th Cir., 1970), cert. den. 400 U.S. 960; *Skelly Oil Co. v. Phillips Petroleum Co.,* 339 U.S. 667 (1950); *Lockerty v. Phillips,* 319 U.S. 182 (1943).

The constitutionality of the provisions of §1332 is not open to question in light of the provisions of Article III, Section 2, of the United States Constitution and the case law of the federal courts. *State of New Hampshire v. National Broadcasting Company,* 222 F.Supp. 915, aff'd 324 F.2d 506 (1st Cir., 1963); *Central States Co-ops. v. Watson Bros. Transp. Co.,* 165 F.2d 392 (7th Cir., 1948), vacated 337 U.S. 951.

(1) Petitioner's pleadings are insufficient to invoke District Court jurisdiction under the provisions of §1331 — Federal question jurisdiction.

Petitioner's boot-strap efforts to invoke §1331, federal question jurisdiction, by attaching the constitutionality of §1331 itself, as well as the provisions of §1332, are patently frivolous. No federal question is presented where the issue has been raised in prior litigation and has been resolved against the position asserted by a current litigant. *Ex parte Poresky,* 290 U.S. 30 (1933); *G. C. Merriam Co. v. Syndicate Pub. Co.,* 237 U.S. 618 (1915).

In this contractual dispute, the off-hand suggestion of federal jurisdiction under 42 U.S.C. §1983, is on its face merely colorable and for the purpose of obtaining a

federal forum. " . . . the federal question . . . must be real and substantial, not colorable or frivolous. . . . Mere references to the federal Constitution, laws or treaties and mere assertions that a federal question is involved are not sufficient to confer jurisdiction." *McCartney v. State of West Virginia*, 156 F.2d 739, 741 (4th Cir., 1946). See also *Dinneen v. Williams*, 219 F.2d 428 (9th Cir., 1955).

(2) Petitioner's pleadings are insufficient to invoke the District Court's jurisdiction under the provisions of §1332 — Diversity of Citizenship.

In the instant appeal, Petitioner brought suit against Respondents whom he denominated in his complaint as "The State of Texas" and "The State Farm Insurance Company".

In order for "diversity" to exist as a basis for federal court jurisdiction, there must be a complete diversity of citizenship of the parties; that is, the Petitioner cannot be a citizen of the same state as any of the Respondents. *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939); *Walker v. Bank of America National Trust & Sav. Ass'n.*, 268 F.2d 16 (7th Cir., 1959), cert. den. 361 U.S. 903, reh. den. 361 U.S. 941.

Petitioner alleges that the Respondent, The State Farm Insurance Company, has its "legal residence" in the State of Illinois (Record, p. 3). However, as an Exhibit to his original complaint, Petitioner attached a

copy of his automobile insurance policy which is at issue, which clearly reflects the issuing company to be State Farm County Mutual Insurance Company of Texas, with its home office in Dallas, Texas (Record, pp. 14-21). The identity of the Respondent is again reflected in Exhibit "F" attached to Petitioner's complaint (Record, p. 28). The residence of Respondent as being the State of Texas is further established by the brief of The State of Texas, entitled "Brief in Support of Defendant's [Respondent's] Motion to Dismiss (Record, p. 45 et seq, at p. 52), wherein it reflects that State Farm County Mutual Insurance Company of Texas is incorporated in Texas with its principal place of business being in Dallas, Texas.

Petitioner's complaint is deficient on its face to invoke diversity jurisdiction because it fails to allege both "citizenship" and "principal place of business" of the Respondent, The State Farm Insurance Company, as being in a state other than Texas.

Since §1332(c) of Title 28, United States Code, expressly states that a corporation is both a citizen of the state in which it has been incorporated and the state where it has its principal place of business, both must be alleged in order that the Court can determine if there is complete diversity of citizenship.

As the Court stated in *James v. Daley & Lewis*, 406 F.Supp. 645 (D. Delaware 1976), at page 647:

> "The complaint's jurisdictional allegations of diversity are also insufficient with respect to the corporate plaintiffs without an allegation as to their state of incorporation *as well as* to the state in which each has its principal place of business." (Emphasis added)

See also: *Oskierko v. Southwestern Horizons, Inc.*, 60 F.R.D. 365 (N.D. Ill. 1973); *Fawvor v. Texaco, Inc.*, 387 F.Supp. 626 (E.D. Tex. 1975); and *Carroll v. General Medical Company*, 53 F.R.D. 349 (D. Neb. 1971).

If it be assumed for the sake of argument that State Farm County Mutual Insurance Company of Texas is a subsidiary of a parent company with principal offices in the State of Illinois, Petitioner has still failed in his attempt to invoke "diversity jurisdiction".

Where a subsidiary corporation is incorporated as a separate entity, it is considered to have its own principal place of business for purposes of federal diversity jurisdiction and the separate place of business of the subsidiary is recognized in determining diversity, even though a parent corporation exerts a high degree of control. *Quaker State Dyeing & Finish. Co. v. ITT Terryphone Corp.*, 461 F.2d 1140 (3rd Cir., 1972).

It is Petitioner's burden to prove all facts in support of diversity jurisdiction, and in the instant case where the Petitioner's own exhibits clearly establish that the Respondent insurance company is incorporated in Tex-

as and maintains its principal place of business in Texas, Petitioner has not met his burden and the District Court properly dismissed Petitioner's action.

Additionally, since the other named Respondent, The State of Texas, is a citizen of Texas, it necessarily follows that "complete diversity" as required by §1332 is lacking.

(3) Petitioner's pleadings are insufficient to establish the jurisdictional amount in controversy to invoke jurisdiction under either §1331 or §1332.

Petitioner's original complaint alleges as damages that by reason of the alleged conduct of the two Respondents, he has been required to pay automobile insurance premiums over a three-year period, which have been increased at the rate of $16.33 per annum over his former premiums (Record, p. 13). In an attempt to satisfy the jurisdiction requirements of the respective statutes, Petitioner sues for "compensatory and exemplary damages" in the sum of $150,000.

A federal district court is not bound by the pleadings, but may fairly examine the causes of action alleged to determine whether the complaint asserts an actionable claim for damages in excess of $10,000. *Hamilton v. Hartford Acc. & Indem. Co.*, 425 F.Supp. 224 (D.C. E.D. Pennsylvania 1977). In the instant case, notwithstanding the Petitioner's subjective state of mind, as a legal certainty his claim does not exceed the sum of $10,000. *Jones v. Landry*, 387 F.2d 102 (5th Cir., 1967).

B. The imposition of an increased annual premium for automobile insurance does not constitute a violation of the "Double Jeopardy" clause of the Fifth Amendment to the Constitution of the United States.

As an alleged basis for federal jurisdiction, Petitioner seeks to bring to bear the "Double Jeopardy" provisions of the Fifth Amendment in considering the propriety of the imposition of a 15% increase in annual premiums.

Mr. Countryman's attempt to categorize a rate increase under the terms of a civil contract as being synonymous with the double jeopardy prohibition of the Fifth Amendment is wholly without merit when viewed in light of the express terms of the Amendment, to-wit: ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb". The simple answer is that he has only been prosecuted criminally for the offense of speeding one time.

The Fifth Amendment does not forbid or even purport to consider civil consequences which may flow from criminal convictions.

State Farm County Mutual Insurance Company of Texas has been unable to find any case which considers the question of premium increases based upon traffic violations under the provisions of the Fifth Amendment. However, there are numerous cases, both state and federal, which hold that a criminal conviction does not bar subsequent civil proceedings arising out of the same transaction or course of conduct.

In suits for civil damages brought by the federal government, the federal courts have consistently held that the civil actions were not precluded notwithstanding that the civil actions were bottomed on the same transactions for which the appealing parties were criminally convicted. See *Rex Trailer Company v. United States*, 350 U.S. 148 (1956), permitting recovery under the Surplus Property Act; *Kenney v. Commissioner of Internal Revenue*, 111 F.2d 374 (5th Cir., 1940), permitting recovery of civil penalties under the Internal Revenue Code; *United States v. Barger*, 458 F.2d 396 (9th Cir., 1972), permitting civil forfeiture of criminal bond.

The same result obtains in state court decisions reviewing state judicial or administrative proceedings. See *Svejcara v. Whitman*, 487 P.2d 167 (N.Mex. App. 1971); *Johnson v. State*, 235 S.W.2d 550 (Ga. App. 1977).

Clearly, if actual civil proceedings are authorized and are not in conflict with the Fifth Amendment, it is beyond question that a premium adjustment to a policy of insurance which the Petitioner, as a party thereto, was free to either accept or reject, is equally invulnerable to a Fifth Amendment attack.

PREMISES CONSIDERED, Respondent, State Farm County Mutual Insurance Company of Texas, prays that the Petition be in all things denied.

Respectfully submitted,

Harrell Feldt

ATTORNEY FOR RESPONDENT, STATE FARM COUNTY MUTUAL INSURANCE COMPANY OF TEXAS

STUBBEMAN, McRAE, SEALY,
LAUGHLIN & BROWDER
P.O. Box 1540
Midland, Texas 79702

Of Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing reply has been served on Petitioner by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

James H. Countryman
214 West Fifth, Room 204
Odessa, Texas 79761

Dated this ____ day of August, 1979.

Harrell Feldt

Supreme Court, U. S.
FILED
NOV 2 1979
MICHAEL RODAK, JR., CLERK

79-112

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-112

JAMES H. COUNTRYMAN

Petitioner,

vs.

THE STATE OF TEXAS AND THE

STATE FARM INSURANCE COMPANY

Respondents.

On Petition for Writ of Certiorari to

the United States Court of Appeals

for the Fifth Circuit

PETITION FOR REHEARING

JAMES H. COUNTRYMAN, per se
214 West 5th.-Room 204
Odessa, Texas 79761
Attorney for Petitioner

SUBJECT INDEX

	Page
INDEX OF AUTHORITIES	ii
GROUNDS FOR REHEARING	2
DIVERSITY NOT AFFECTED BY XI AMENDMENT	5
JURISDICTION	7-9
RESIDENCE OF RESPONDENTS	9-10
REFUTATION OF RESPONDENTS BRIEFS	11-15
CERTIFICATE OF COUNSEL	16
CONCLUSION	17
CERTIFICATE OF SERVICE	18

INDEX OF AUTHORITIES

	Page
Chisholm, Executor v. Ga. 2 Dall. 419-	5
Treinies v. Sun. Min. Co. 308 U.S. 66-	8
Statutes:	
Con. U.S. Arts. I, II, III, Sec. 2,Cl. 1-	4
Con. U.S. Eleventh Amendment	4,7

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 78-112

JAMES H. COUNTRYMAN

Petitioner,

vs.

THE STATE OF TEXAS AND THE

STATE FARM INSURANCE COMPANY

Respondents.

On Petition for Writ of Certiorari to

the United States Court of Appeals

for the Fifth Circuit

PETITION FOR REHEARING

Petitioner presents his petition for a rehearing of this Court's order dated October 1, 1979, denying the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

PART 1. The Constitution of the United States, consisting of a Preamble and VII Articles, was adopted on July 2, 1788, and went into effect on March 4, 1789, Each Article is divided into numbered Sections and Clauses. Articles I, II and III established, respectively, the Legislative, The Executive and the Judicial powers of the United States.

PART 2. For the purposes of this Application for Rehearing, we will be concerned with Article III, Section 2, Clause 1. and the Eleventh Amendment which was passed by Congress on March 5, 1794, and Ratified January 8, 1798. Article III, Sec.

2, Cl. 1 is as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority;- to all cases affecting ambassadors, other public ministers and consuls;- to all cases of admiralty to controversies to which the United States shall be a party;- to controversies between two or more States;- between a State and citizens of another State;- between citizens of different States;- between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States citizens or subjects."

PART 3. The first case to reach the Supreme Court of the United States to test the constitutionalality of Sec. 2, Cl. 1 of Article III, was the case of Chisholm, Executor, v. Georgia, reported in 2 Dallas, 419. At that time, the Supreme Court consisted of five justices. They were, Mr. John Jay, Chief Justice, and Associate Justices Mr. John Rutledge, Mr. James Wilson, Mr. John Blair, and Mr. James Iredell.

PART 4. Chisholm, Executor, brought an action of assumpsit against the State of Georgia. When the case went before the Court for considereation, counsel for the State of Georgia made a protest in writing against the Court's taking jurisdiction of the case, but declined to argue the question. The sole question at issue was whether a citizen can invoke the jurisdiction of a United States Court in a state in which he does not have citizenship, something one is permitted to do under Section 2, Clause 1, of Article III of the Constitution as quoted above. The Court was divided 4 to 1 in upholding the validity of Chisholm's suit, with the Chief Justice and three associate justices writing separate opinions, and Associate Justice Iradell writing a dissenting opinion.

PART 5. The decision in the Chisholm case created much excitment, and in two days after it was announced the Eleventh Amendment was

offered in Congress, but it was not ratified until January 8, 1798. Though the Amendment is couched in the plainest of language consisting of 43 words, it has been the bewilderment of the Congress and courts unceasingly. First, it might be asked: What effect did it have on Section 2, Clause 1 of Article III of the Constitution? The answer is clear:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

PART 6. It seems clear, therefore, that the only effect the amendment had on Article III of the Constitution was to abrogate that proision which permits a citizen to invoke the jurisdiction of a United States Court to bring into that court, as a defendant, a State of the Union of which he is not a citizens.

PART 7. The words diverse, or diversity, as pertaining to the citus of one's place of residence, and affecting his right to invoke the jurisdiction of a Federal court to enforce his consitutional rights, are not mentioned in either Article III of the Constitution, or in the Eleventh Amendment.

It is most difficult to believe that the founders of this Republic would write into the Constitution any provision which would deny access to the courts because of insurmountable difficulties involving the places of the litigants' abode, and the amount of money, or the value of the things in litigation.

PART 8. It seems that a lively difference of opinion prevails between Mr. Cook, and Mr. Feldt in reference to the question of diversity, since the latter cited the case of Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939), but Mr. Cook failed to give

that case accreditation. Mr. Feldt made a brief statement concerning what he thought the Treinies case held, but he must be in error, for Mr. Justice Reed, who wrote the opinion in that case, said nothing that justified Mr. Feldt's views. Here is what he said:

> "In order for "diversity" to exist as a basis for Federal Court jurisdiction, there must be complete diversity of citizenship of the parties; that is, the Petitioner cannot be a citizen of the same state as any of the Respondents."

This is what Mr. Justice Reed said in the Treinies case:

> "The complainant is a proper party for the determination of the controversy between the adverse claimants, citizens of different states. Their controversity could have been settled by litigation between them in the Federal Courts. Under similar circumstances as to parties, this Court ruled that a removal of separable controversies to the Federal Court was permissible even though a proper defendant was a citizen of the same state as the plaintiff."

PART 9. In the Treinies case, supra, the question of jurisdiction was discussed under

headnote 3, where it is said:

> "Jurisdiction.--Before considering the question raised by the petition for certiorari, the jurisdiction of the Federal court under the Act of January 20, 1936, must be determined. As this issue affects the jurisdiction of this Court, it is raised on its own motion."

No one can doubt the soundness of this rule, but can it apply to every case with the same force and effect. Petitioner respectfully pleads for a modified view:

Under date of July 24, 1979, the office of the Clerk of the Supreme Court notified Petitioner that the petition for writ of certiorari in this case was entered upon the docket of the Court on April 12, 1979. Opposing counsel were given proper notices of the docketing of the case, and each of them respectively, filed Briefs in Opposition to the writ.

PART 10. On page 8 of Mr. Feldt's Brief in Reply to Petition for Writ of Certiorari, he attempts to show that there are two

State Farm Insurance Companies, and it so happens that the one which insured Petitioner has its residence in the State of Texas. This is also the liturgy which is used by Mr. Cook to regale the Court. They failed to call the Court's attention to the statement hereto attached as Exhibit A, dated 4-20-76, issued in the name of the "STATE FARM INSURANCE Home Offices, Bloomington, Illinois," and referring to Policy Number 9616 418-F14-53A, which was the identical automobile insurance policy that was issued to the Petitioner and upon which this suit was instituted.

PETITIONER'S EXHIBIT A

STATE FARM INSURANCE

Home Offices, Bloomington, Illinois

DATE	POLICY NUMBER	AGENT
4-20-76	9616 418-F14-53A	H D Copeland 3271

Countryman, James H.
1700 N. Graham
Odessa, TX 79760

Dear Policyh ar:
Information within a Consumer Report furnished by:

Texas Department of Publis Safety

Austin, Texas

has influenced our decision to increase the charge for your insurance.
Your next billing will reflect this change. If additional information is desired, contact your agent.
Effective 6-14-76

James - Speed - 7-25-74

G5272.1 PRINTED IN U.S.A.

PETITIONER'S EXHIBIT A

PART 11. After Respondents received notice that the petition for writ of certiorari had been entered upon the docket of the Court, each of the Respondents filed a Brief In Opposition. Upon reviewing these documents it was observed that each of them was saturated with numerous statements and innuendoes, none of which was supported by even a scintilla of evidence, but all were in derogation of the Petitioner. When the District Court and the Court of Appeals agreed with the Respondents that it was unlawful to reveal the facts in the case, was not that a denial of justice?

PART 12. When this Court dismissed the petition for certiorari after receiving Respondents' Briefs in Opposition, without according Petitioner an opportunity to reply to the many inaccurate and unsubstantiated allegations alleged against him, was not that a denial of due process of law? The fact being that on the day

Petitioner received notice that his petition for a writ of certiorari had been denied he was in the process of mailing his Reply Brief to the Court and to the attorneys for the Respondents, and the time for filing such Brief had not then expired.

PART 13. Since the petition for writ of certiorari was denied while Petitioner was in process of completing and mailing his reply to the contumelious contents of the State of Texas' "BRIEF IN OPPOSITION," and the State Farm Insurance Company's "GROUNDS FOR OPPOSITION OF THE PETITION," Petitioner begs leave of the Court to answer a few of the many inaccuracies which appear in Respondents' Briefs.

Page 3, Texas Brief: At no time has Petitioner ever said or contended that Congress has no authority to restrict the jurisdiction of the inferior Federal courts. What

Congress can give, it can take away. The petition simply asked the Court to declare the act of Congress limiting the jurisdiction of inferior Federal courts to cases where more than $10,000.00 in amount or value was involved, to be unconstitutional. In the penultimate paragraph of page 4 of this brief, the writer is transmitting through the receiving end of the telephone.

Page 5, Texas Brief: It is not true, as is asserted in the second paragraph of this page, that petitioner attempts to substitute unconstitutionality for jurisdiction. Here, Civil rights are involved, and in such cases it is not necessary to allege any particular amount of money or value to be involved.

PART 14. The attorney for the State Farm Insurance Company, in "GROUNDS FOR OPPOSITION OF THE PETITION", named 27 case authorities, of which apparently, 16 were district court, or Court of Appeals Decisions, and 11 United States Supreme Court decisions.

The Texas Brief cited 10 case authorities, of which apparently, 8 were Supreme Court decisions, and 2 District or Court of Appeals decisions.

However, not one of the cases cited was decisive of the question of double jeopardy as it is involved in this case, and not one of them totally supports the many faceted issues that the Respondents have lugged in, to confuse the real issues in the case.

Pages 8-11. State Farm Brief. Mr. Feldt has much to say about the dual organizations of the State Farm Insurance Company and the State Farm County Mutual Insurance Company, but neither Respondent has made any attempt to explain just why that is so. If the two lower courts had not held that it was unlawful for the facts involving the operations of these Respondents to be revealed before a jury, evidence would have been introduced to prove the nature of their operations.

However, in their pleadings, and otherwise, the Respondents have confessed to some of the results of their dual operations. One is that age, and not competence and capability is the criterion for determining who must be relegated to the State Farm Mutual member of the team, and here, those who are so unfortunate as to be assigned to this caste must pay a higher premium rate on their insurance, and if they are so unfortunate as to be made to pay a traffic fine they must pay a surcharge on their insurance for three years.

Those who are fortunate enough to make the higher caste, pay less premiums on their insurance, and are exempt from the payment of surcharges for traffic violations. Is this not self-confessed discrimination?

CERTIFICATE OF COUNSEL

I, James H. Countryman, counsel for the within named Petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court, to the best of my knowledge and understanding.

James H. Countryman

Counsel for Petitioner

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit.

James H. Countryman

Council for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that forty copies of the within and foregoing Application for rehearing of the order denying the Petition for Writ of Certiorari entered on the 1st day of October, 1979 in case Number 79-112, have been mailed to the Clerk of the Supreme Court of the United States, and that three copies of the same foregoing Application for Rehearing were deposited in the United States Mail, postage prepaid, addressed to each of the attorneys of record for the Respondents' Mr. Harrell Feldt, P.O. Box 1540 Midland, Texas, 79702, and Mr. John Rowland Cook, P.O. Box 12548, Capitol Station, Austin, Texas (512) 475-4481.

This the 26th day of October, 1979.

James H. Countryman

JAMES H. COUNTRYMAN, per se
214 West 5th - Room 204
Odessa, Texas 79761
Attorney for Petitioner